HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.781 OF 2007

Between:

The Managing Director,
Deccan Chronicle Private Limtied,
Sec'bad and another

…. Appellants

And

Sri Syed Ziauddin and others

… Respodnents

:: JUDGMENT ::

Counsel for the appellants : Shri D. Prabhakar Reddy

21st September, 2007

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 28-2-2007 passed by the learned Single Judge in Writ Petition No. 19500 of 1997, whereby

he declined to interfere with order dated 9-6-1997 passed by the Authority under the Payment of Wages Act and the Assistant Commissioner of Labour, West Godavari, Eluru (respondent No.2 herein) under the Payment of Wages Act, 1936 (for short, 'the Act').

Respondent No. 1 Syed Ziauddin filed an application under Section 15 of the Act for issue of a direction to the non-applicants (the appellants herein) for payment of wages for the period from August, 1991 to July, 1995. In his application, respondent No.1 averred as under:

i) that he was appointed as Part-time Reporter at Bhimavaram on a monthly lumpsum payment of Rs.500/- vide order dated 27-5-1987;

ii) that he was paid "line account" remuneration in addition to lumpsum payment;

iii) that the remuneration towards the line account was paid on the basis of matters published in the columns of the paper;

iv) that he has been sending reports and list of reports every month to the Vijayawada Office of the opposite parties, but he was not paid monthly lumpsum and line account remuneration as per Bachawat Award;

v) that he was paid wages etc., till July 1991 and that the opposite parties did not pay him wages and line account remuneration from August, 1991 to July, 1995, and

vi) that he is entitled to receive a sum of Rs.20,421.20 ps towards 1/3rd basic wages and Rs.22,035 towards full dearness allowance and Rs.23,730/- towards line account remuneration.

Along with the application, respondent No.1 filed an application for condonation of delay, which was allowed by respondent No.2.

In the counter filed by the opposite parties (the appellants

herein), it was averred that the applicant (respondent No.1 herein) was appointed purely as a part-time reporter on 1-6-1987 on purely temporary basis on a monthly lumpsum payment of Rs.500/- and line account remuneration for sending more than 500 column centimeters; that he continued in service till the end of July, 1991 and that from August, 1991, he voluntarily discontinued the engagement because he was enrolled as an advocate at Bhimavaram and started practicing at Shimavaram.

Respondent No.1 examined himself as A.W 1. He affirmed the case set up in the application and claimed that he was not paid monthly amount and line account remuneration from August, 1991. He denied the suggestive assertion contained in the reply of the opposite parties that he gave up part-time reportership after joining as an advocate and claimed that he was enrolled as an advocate before taking up the assignment as part-time reporter of the newspaper.

The appellants did not produce any evidence in support of their cause.

After considering the averments contained in the application of respondent No.1, reply of the appellants and evidence produced before him, respondent No.2 held that the applicant (respondent No.1) worked as part-time reporter under the opposite parties from August, 1991 to July, 1995 and that he was not paid wages in as per Bhachawat Award. Accordingly, he allowed the application and directed the appellants herein to pay to the applicant Rs.20,421/- towards 1/3rd basic wage and Rs.7,345 towards 1/3rd dearness allowance (total Rs.27,766/-). For the sake of reference, the relevant portions of the order passed by respondent No.2 are reproduced below:

"Now the points for consideration before this Authority are:

1) Whether the claim of the Applicant is maintainable under the Act?

2) If so, what relief the Applicant is entitled.

Basing on the material available on record, I shall proceed to determine the above issues as follows:

Issue No. 1: The contention of the Applicant is that he was appointed by the Opposite Parties as a part time reporter on a monthly lumpsum payment of Rs.500/- and Opposite Parties used to pay line account remuneration w.e.f August, 1989 besides lumpsum amount of Rs.500/- that the O.P. Management began implementing the Bachawat Award w.e.f. 01-12-1989, according to which a part-time reporter is entitled for 1/3rd for 1/3rd basic wages and full D.A. applicable to a full-time reporter. He further contended that from August, 91 onwards, he was not paid the wages including line account remuneration even though he has been sending the news items to the Opposite Parties regularly; that he was not removed from service by the Opposite Parties or returned his news items; that as he did not receive his wages or any response from the Opposite Parties, he filed three claim applications for the period from August, 1991 to July, 1995, claiming his wages and line account remuneration; that from August, 1991 onwards, he has been sending news items, but the same were neither returned nor his services were terminated by the Opposite Parties and that he never informed the Opposite Parties that as he enrolled as an Advocate, it would not be possible for him to send news items.

The Opposite Parties contended that in P.W. Cases 7/94 and 18/94 that the Applicant himself voluntarily left the organization from August, 1991 onwards, as he was enrolled as an Advocate and practicing at Bhimavaram and therefore the Applicant is not eligible for any claim against them.

Except simply denying the contentions of the Applicant, the Opposite Parties did not chose to produce the relevant documentary evidence tore but their contention and further they have also failed to file counter in P.W. Case No. 16/95, even though sufficient time was given.

In the absence of any contradiction evidence from the

Opposite parties, I cannot but rely on the evidence putforth by the Applicant.

As per A.W-1 Applicant, it is evident that the Applicant worked under the Opposite Parties as a part-time reporter for the period from August, 1991 to July, 1995 and I, therefore, hold that the claim of the Applicant is maintainable under the Act.

Issue No.2: The Applicant contended that the Opposite Parties began implementing the Bachawat Award w.e.f 01-12-1989 according to which a part-time reporter is entitled for 1/3rd basic wage and full D.A. applicable to a full time reporter.

The Opposite Parties contended that the Applicant claimed 1/3rd basic wage, but claimed full D.A. as applicable to a full time reporter.

As per Sec. IV, para 17.2 of Ex.A-59 Bachawat Award "every part-time correspondent shall be paid not less than 1/3rd of the basic wage – D.A. applicable to a full-time correspondent at similar level. In addition, payment should be made a him on column basis, the rate to be settled by mutual negotiations provided that no news paper establishment shall out any restriction on a part-time correspondent that he will not work for more than one news paper unless he is appointed full time".

In the result, I hold that the Applicant is entitled for 1/3rd basic wages and 1/3rd D.A. applicable to full-time reporter as follows, for the period from August, 1991 to July, 1995 covering all the three claims applications (rounded off to nearest rupee).

Case No.	**1/3rd basic wage**	**1/3rd D.A.**	**Total**
P . W . Case No. 7/94	Rs.20,421-00	Rs.7,345-00	Rs.27,766-00
P . W . Case No. 18/04	Rs.5,063-00	Rs.2,238-00	Rs.7,301-00
Total	Rs.33,654-00	Rs.13,442-00	Rs.47,096-00

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The writ petition filed by the appellants for quashing the order of respondent No.2 was dismissed by the learned Single Judge, who observed that the findings recorded by the competent authority on the

issues of nature of engagement of respondent No.1 and non-payment of wages and allowance to him are based on correct appreciation of the facts and evidence.

Shri Prabhakar Reddy, learned counsel for the appellants fairly conceded that there is no plausible explanation for his clients' failure to produce evidence to controvert the statement made by respondent No.1 and the documents produced by him, but argued that the order passed by respondent No.2 for payment of Rs.27,766/- to respondent No.1 by way of 1/3rd basic wage and 1/3rd dearness allowance is liable to be set aside because respondent No.1 had voluntarily abandoned his engagement as part-time reporter. Learned counsel emphasized that after his enrolment as an advocate, respondent No.1 stopped sending reports to the newspaper and argued that respondent No.2 committed a serious error by ordering payment of wages and dearness allowance to respondent No.1 ignoring the factum of his enrolment as an advocate.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed summarily.

It cannot be disputed that the findings recorded by respondent No.2 on the issues of engagement of respondent No.1 as part-time reporter and payment of monthly remuneration to him by the appellants as also the non-payment of wages and allowances for the period from August, 1991 to July, 1995 are pure findings of fact. In exercise of the power of judicial review vested in this Court under Article 226 of the Constitution of India, the learned Single Judge could have interfered with these findings only if he felt convinced that the same are vitiated by error of law apparent on the face of the record. However, a perusal of the order under challenge shows that the learned Single Judge was not at all convinced with the appellants' plea that the findings of fact

recorded by respondent No.2 are erroneous. The learned Single Judge briefly adverted to the factual matrix of the case and dismissed the writ petition by making the following observations:

> "There is no dispute as to the Award and its applicability to the 1st respondent. Petitioner – Management has totally denied the part-time Reportership of the 1st respondent right from 1.8.1991 to 31.7.1995. The claimant-respondent No.1 marked several documents to show that every month he has been sending reports to the petitioner – Management for its use/publication. Absolutely, there is no contra evidence to show that the news items sent by the 1st respondent were not received by the Management or they are not true. Nothing has been elicited from W.W. 1 to show that the documents filed by him are not true and correct. I am of the opinion that the Authority under the Payment of Wages Act has not committed any error calling for interference of this Court under Article 226 of the Constitution of India."

We are incomplete agreement with the learned Single Judge that the findings recorded by respondent No.2 do not suffer from any error much less an error of law apparent on the face of the record.

The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. A writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the

finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> "i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to

exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2].

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], their Lordships of the Supreme Court, while

dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4], the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> "i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any

of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by
saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

By applying the ratio of the above noted judgments to the facts of this case, we hold that the appellants have failed to make out a case for interference with the order of respondent No.2 and the appeal is liable to the dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP No. 1564 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY,J

September 21, 2007
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[1] AIR 1964 SC 477
[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[3] AIR 1970 SC 61
[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[5] AIR 2003 SC 3044